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IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

THE PECHANGA BAND OF MISSION INDIANS,
Petitioner,
v.
KACOR REALTY, INC., *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF RESPONDENTS-DEFENDANTS IN OPPOSITION

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QUESTION PRESENTED

Whether a reservation established by trust patent issued pursuant to the Mission Indian Relief Act of 1891 necessarily included all land within a prior executive order reservation granted by authorization of the Four Reservations Act of 1864.

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BRIEF OF RESPONDENTS-DEFENDANTS IN OPPOSITION

Respondents Kacor Realty, Inc., Murdy Foundation, Security Title Insurance Company, John A. Murdy III, George A. Trotter, Jr., and J.A. Murdy, Jr., submit this brief in opposition to the petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit filed by petitioner, the Pechanga Band of Mission Indians.[1]

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[1] Since the rendering of the Ninth Circuit's opinion, respondent Kacor Realty, Inc. has changed its name to Kacor Development Company. The parents and affiliates of Kacor Development Company include Kaiser Aluminum & Chemical Corp., Westward Properties, Inc., Kaiser Hawaii Kai Development Co., and Kaiser Telepromter of Hawaii, Inc. The parent of respondent Security Title Insurance Company is Safeco Title Insurance Company, a wholly-owned subsidiary of Safeco Corporation.

OPINIONS BELOW AND JURISDICTION

Respondents do not disagree with petitioner's statements under the above headings.

STATUTES INVOLVED

Section 2 of the Four Reservations Act of 1864, Ch. 48, 13 Stat. 39 (1864), states in relevant part:

> [T]here shall be set apart by the President, and at his discretion, not exceeding four tracts of land, within the limits of [California], to be retained by the United States for the purposes of Indian reservations, which shall be of suitable extent for the accommodation of the Indians of said state, and shall be located as remote from white settlements as may be found practicable, having due regard to their adaptation to the purposes for which they are intended . . . .

Relevant portions of the Mission Indian Relief Act of 1891, Ch. 65, 26 Stat. 712 (1891), are set out in the Appendix to this Brief.

STATEMENT OF THE CASE

The respondents, defendants below, are the present owners of approximately three hundred twenty acres of valuable undeveloped land located southeast of the town of Temecula, in the Rancho California area of Riverside County, California (hereinafter "land at issue"). It is without dispute that respondents' interest in the land at issue is founded upon an unbroken chain of title from two nineteenth-century patents issued by the United States to a settler pursuant to the homestead and preemption laws. The petitioner, Pechanga Band of Mission Indians, asserts herein that it enjoys a beneficial interest in the land at issue by virtue of an 1882 executive order and that it is entitled to almost one hundred years of trespass damages. It is acknowledged that petitioner has never

occupied or possessed this land at any time since the adte of that executive order.

The Mission Indian Reservation was originally established in southern California pursuant to the Four Reservations Act of 1864 which authorized the setting aside of public lands for such purposes by executive order.[2] This reservation did not consist of a single contiguous tract but instead was composed of numerous noncontiguous tracts located in three counties. Over a number of years and a series of Presidents, various executive orders added lands to the Mission Indian Reservation, took lands away, and even terminated entire reservations.[3]

On June 27, 1882 President Chester A. Arthur signed an executive order pursuant to the authority of the Four Reservations Act which reserved certain described lands in the Temecula area "for Indian purposes."[4] The land

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[2] Act to Provide for the better Organization of Indian Affairs in California (Four Reservations Act), Ch. 48, 13 Stat. 39 (1864).

[3] This process of alteration was described by the Court in an analysis of the Four Reservations Act:

> [I]t is noteworthy that the boundaries of the Mission Reservation were altered repeatedly between 1870 and 1875, and even thereafter. These actions were taken under the President's continuing authority to set apart and add to or diminish the four reservations authorized under the 1864 Act.

Mattz v. Arnett, 412 U.S. 481, 493-94, n.15 (1973). *See also*, Donnelly v. United States, 228 U.S. 243, 256-57 (1913); Crichton v. Shelton, 33 Pub. Lands Dec. 205, 209-10 (1904).

[4] Exec. Order of June 27, 1882, 1 Executive Orders Relating to Indian Reservations from May 14, 1855 to July 1, 1912 at 822-23 (Gov't Printing Office 1912). The full text of the executive order is as follows:

> EXECUTIVE MANSION, *June 27, 1882.* It is hereby ordered that the following-described lands, situated and lying in the State of California, viz, sections numbered 26, 27, 28, 34, and 35, in township numbered 8 south, of range numbered 2 west, of the San Bernardino meridian, be, and the same hereby are, withdrawn from sale and settlement, and set apart for Indian

at issue was contained within the legal description of that executive order. However, that same order contained an exclusion for land as to which title had already passed from the United States and land as to which "valid, legal rights" had attached under existing laws providing for the disposition of the public domain. Respondents' interests in the land at issue stem from two patents issued to an immigrant pursuant to the provisions of the homestead and preemption laws. The settler perfected his rights to the land by a process initiated by him prior to the 1882 executive order, although the patents were issued after the order.

In 1891 the Mission Indian Relief Act[5] was passed by Congress to give the Mission Indians of California reservations of greater permanence and certainty than the *ad hoc* reservations previously created by executive orders. The Act empowered the Secretary of the Interior to oversee the establishment of these new reservations. The first step in the process was for him to appoint commissioners to propose reservation sites.[6] Their selection was to become "valid when approved by the President and Secretary of the Interior."[7] The Act instructed the Secretary that "if no valid objection exists, [he] shall cause a patent to issue for each of the reservations selected by the commission."[8] However, an express constraint on his authority was that "no patent shall embrace any tract or tracts to which

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purposes: *Provided, however,* That any tract or tracts the title to which has passed out of the United States, or to which valid, legal rights have attached under existing laws of the United States providing for the disposition of the public domain, are hereby excluded from the reservation hereby created.

CHESTER A. ARTHUR

[5] An Act for the Relief of the Mission Indians in the State of California (Mission Indian Relief Act), Ch. 65, 26 Stat. 712 (1891).

[6] *Id.*, § 2.

[7] *Id.*

[8] *Id.*, § 3.

existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain."[9]

Pursuant to the 1891 Act, a trust patent signed by President Cleveland was issued to the petitioner at the direction of the Secretary of the Interior on August 29, 1893. The patent included certain portions of the land encompassed by the 1882 executive order but it did not include any portion of the land at issue nor two adjacent tracts. Although from time to time the United States has added to petitioner's reservation lands by further trust patents, none of those has included the disputed land.

The decision to exclude the land at issue from the 1893 trust patent to petitioner was deliberate. Prior to issuance of the patent in 1893, the Commissioner of the General Land Office informed the Secretary of the Interior that public land entries had been allowed on the land at issue and the two adjacent tracts. This information was transmitted to the Commissioner of Indian Affairs, who subsequently advised the Secretary of the Interior that the 1891 Act required that such lands be excluded from the trust patent reservation for petitioner unless the owners of such lands consented to release their interest and the government compensated them.

In 1894, on the basis of allegations by an Indian agent employed by the Bureau of Indian Affairs, the United States instituted two actions to have the settler's patents set aside, asserting that they had been obtained by fraud. In 1901, the United States Attorney General, with the concurrence of the Secretary of the Interior, the Commissioner of Indian Affairs, and the United States Attorney for Southern California, determined to dismiss these two actions because they concluded that the land at issue had long before passed into the hands of *bona fide* purchasers.

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[9] *Id. See also*, Pechanga Band v. Kacor Realty, Inc., 680 F.2d 71, 74 (9th Cir. 1982).

The Ninth Circuit Court of Appeals affirmed the district court's dismissal of the claim because "the Pechanga Band's reservation did not include the land at issue, and . . . we cannot independently grant the land to the Band." [10] This conclusion was based upon the determination that the petitioner's reservation was established by the Mission Indian Relief Act of 1891 and, acting pursuant to that Act, the Secretary of the Interior never included the land at issue in that reservation. In effect, his decision "worked to extinguish whatever interest the Band had in the land [at issue] pursuant to the 1882 Executive Order." [11]

REASONS FOR DENYING THE WRIT

The Court of Appeals and District Court Properly Concluded That the Mission Indian Relief Act of 1891 Created New Reservations and Thereby Extinguished Any Interest the Band May Have Acquired Under the 1882 Executive Order.

The Ninth Circuit Court of Appeals held that the "Missions Indian Relief Act of 1891 worked to extinguish whatever interest the Band had in the land pursuant to the 1882 Executive Order." [12] In so holding, the court determined that the 1891 Act conferred authority on the Secretary of the Interior to exclude from the new reservation land which was contained within an earlier executive order reservation. The Ninth Circuit held that there was

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[10] Pechanga Band v. Kacor Realty, Inc., 680 F.2d at 75.

[11] *Id.* at 74. In view of its ruling on the effect of the 1891 Act, the Ninth Circuit did not consider whether the 1882 executive order reservation ever included the land at issue because of the exclusionary language in the order and the activities of the settler prior to the date of the order. 680 F.2d at 73 n.2. The Ninth Circuit also did not consider whether the respondents were such *bona fide* purchasers as to preclude petitioner's claim. Each of these separate, alternative grounds constituted additional reasons for the dismissal of this case by the district court. *See* Pechanga Band v. Kacor Realty, Inc., No. CV-78-4499-MML (C.D. Ca. Aug. 22, 1980) (Petition, Appendix A, at 15-17).

[12] Pechanga Band v. Kacor Realty, Inc., 680 F.2d at 74.

no reason to look behind the Secretary's purposeful and unambiguous decision not to include the land at issue in the trust patent issued pursuant to the 1891 Act. These conclusions are fully consistent with the express language and purpose of the 1891 Act, do not conflict with previous decisions of the Court and conform with well-established standards of statutory interpretation applied by the Court in Indian law cases.

A. *The Mission Indian Relief Act of 1891 Was Intended by Congress to Establish Permanent Reservations for the Mission Indians Without Necessarily Including All Land Contained Within Earlier Executive Order Reservations.*

As noted above, the Mission Indian Relief Act of 1891 was passed by Congress to replace the hodge-podge system of constantly altered, ill-defined executive order reservations created under the Four Reservations Act of 1864. The means by which the existing executive order reservations could be replaced by more permanent and clearly identified trust patent reservations was subject to serious congressional and executive consideration.[13] After several years of debate and delay the Mission Indian Relief Act was finally adopted on January 12, 1891.[14]

The stated purpose of this Act was "to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided." [15] The first

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[13] *See, e.g.*, Sen. Exec. Doc. No. 19, 48th Cong., 1st Sess. 4-5 (1884) (Message of President Transmitting Draft Legislation for Mission Indian Relief Act).

[14] Mission Indian Relief Act, Ch. 65, 26 Stat. 712 (1891).

[15] *Id.* §1. *See also* the instructions by the Commissioner of Indian Affairs to the commission created to implement the 1891 Act:

> The object of the Act of January 12, 1891, is to secure the determination and adjustment of the rights of the Mission

step in fulfilling such a purpose was the appointment of a commission "to select a reservation for each band or village of the Mission Indians . . . which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements . . . ." [16] However, that selection was not final under the Act which went on to provide that such a selection "shall be valid when approved by the President and Secretary of the Interior." [17] In this respect, the Secretary, "if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the commission and approved by him in favor of each band or village of Indians occupying any such reservation . . . ." [18] Moreover, his authority to allow for the issuance of a patent was limited by the provision that "no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain" unless compensation is paid.[19]

It is significant that the 1891 Act directed that the lands to be patented to the Mission Indians as their permanent reservations were to be chosen without necessarily conforming to the boundaries of any previously created executive order reservations. Instead, the Indians were to obtain a new and permanent interest "as far as practicable" in the lands which they actually occupied,

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Indians as regards their lands, and also of the rights and claims of settlers in conflict therewith.

Letter of T. J. Morgan, Commissioner of Indian Affairs, to Members of Mission Indian Commission (January 31, 1891).

[16] Mission Indian Relief Act § 2, Ch. 65, 26 Stat. 712 (1891).

[17] *Id.*

[18] *Id.* § 3.

[19] *Id.*

possessed and needed.[20] This was true even if it required the exclusion of land that was previously included in an executive order reservation:

> The object of the commission is to ascertain exactly what lands the Indians do occupy and need, what they do not occupy or need, and to include the former, as far as possible, in reservations, and to exclude the latter from the reservation as selected and defined by you. You therefore have ample authority to effect the change suggested . . . that is, to give up lands within the reservation not occupied or needed by the Indians in order to secure within the reservation, free from incumbrance [sic], lands which are needed for the Indians.[21]

Petitioner asserts that "the purpose of the [1891] Act was entirely to safeguard existing Indian property rights under the pre-1891 Executive Orders." [22] However, a reading of the terms of the Act and these contemporaneous interpretations by officials charged with authority for implementing the Act,[23] establishes without question that it was under the authority of the 1891 Act alone that a final reservation was to be established for the Pechanga Band. There was clear statutory direction from Congress to the Secretary of the Interior to establish *de novo* a permanent reservation for these Indians. While the previously existing executive order reservation created under the now superseded 1864 Act could provide

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[20] Petitioner has acknowledged that it has not occupied or possessed the disputed land since June 27, 1882 and therefore obviously was not "in the actual occupation and possession" of this land at the time of the enactment of the 1891 Mission Indian Relief Act.

[21] Letter of R. V. Belt, Acting Commissioner of Indian Affairs, to Members of the Mission Indian Commission (April 1, 1891).

[22] Petition at 7.

[23] The Court has consistently held that deference should be given to the construction of statutes reached by the agents charged by Congress with implementing such laws. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969). This is particularly true

some guidance for the Secretary in the ultimate choice of the location of the trust patent reservation, those previous grants were no longer of legal consequence. The 1891 Act was by design a departure from past unsuccessful policies and an attempt to begin anew in finding reservations for the Mission Indians. As a result, although petitioner speaks of the Secretary's determination as a "divestiture" of its prior interest,[24] in fact it was simply a determination not to include all of the land previously within earlier executive orders in the permanent reservation. That later determination was clearly contemplated and authorized by the 1891 Act.

Petitioner has not contended in this Court or below that Congress was without power to replace the executive interests created under the 1864 Act with the new reservations established under the 1891 Act. Indeed, it is well established that executive order reservations, including those created pursuant to the Four Reservations Act,[25] were of a limited, indefinite and fragile nature, subject to extinguishment or modification at any time.[26] Moreover, it is a fundamental principle that Congress has the ability

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when it involves "a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion . . . ." Udall v. Tallman, 380 U.S. 1, 16 (1965) *quoting* Power Reactor Development Co. v. International Union of Electrical, Radio and Machine Workers, 367 U.S. 396, 408 (1961). *See also*, Russ v. Wilkins, 624 F.2d 914, 922-23 (9th Cir. 1980), *cert. denied*, 451 U.S. 908 (1981) (Act of 1890 reducing size of Round Valley Indian Reservation).

[24] Petition at 6.

[25] Mattz v. Arnett, 412 U.S. 481, 493-94 n.15 (1973); Donnelly v. United States, 228 U.S. 243, 258 (1913).

[26] *See, e.g.*, Sioux Tribe v. United States, 316 U.S. 317, 327-28 (1942) (Indians on executive order lands are "mere tenants at will, and possess no permanent rights to the lands upon which they are temporarily permitted to remain"); Hynes v. Grimes Packing Co., 337 U.S. 86, 103-04 (1949); Confederated Bands of Ute Indians v. United States, 330 U.S. 169, 176-78 (1947).

to unilaterally effect radical changes in the status of Indian reservations. These changes are generally subject to consequences that only apply between the United States and the tribes themselves and not between the tribes and third persons.[27] Thus, the Ninth Circuit was accurate in its holding that Congress had the power "to extinguish whatever rights were created by the 1882 Order." [28]

Petitioner attempts to circumvent the language and history of the 1891 Act by asserting that the exclusion of the disputed land from the trust patent was somehow contrary to the purposes of the Mission Indian Relief Act and thus of no consequence.[29] Yet the very case petitioner relies upon, *Arenas* v. *United States*,[30] which was concerned with the manner in which the Secretary of the Interior was to allocate and establish these reservations, is itself founded upon the premise that the 1891 Act had the prospective purpose "to settle these several bands on suitable reservations and [issue] appropriate patents . . . ." [31] Nor was the 1891 Act "ambiguous" as petitioner attempts to suggest.[32] As explained above, the Act provides clear directions on how "to select a reservation for each band." [33] The well-known principles of interpretation applicable to Indian statutes have not been violated by the Ninth Circuit which, in construing the 1891 Act,

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[27] United States v. Sioux Nation, 448 U.S. 371, 403 (1980); Shoshone Tribe v. United States, 299 U.S. 476, 497 (1937); Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903). *See also*, Pechanga Band v. Kacor Realty, Inc., No. CV-78-4499-MML (C.D. Ca. August 22, 1980) (Petition, Appendix A at 17).

[28] Pechanga Band v. Kacor Realty, Inc., 680 F.2d at 74.

[29] Petition at 5-6.

[30] 322 U.S. 419 (1944).

[31] *Id.* at 421.

[32] Petition at 6.

[33] Mission Indian Relief Act § 2, 26 Stat. 712 (1891).

was specifically aware of the "special protection" afforded Indian tribes in these matters.[34]

B. *Authority Under the 1891 Act Was Properly Delegated and Implemented by the Secretary of the Interior.*

Petitioner attempts to argue that the issuance of the 1893 trust patent by the Secretary of the Interior was not of "equal stature or dignity" to the 1882 Executive Order and therefore could not extinguish any interest created by it.[35] Petitioner also contends that, in any event, the 1893 trust patent did not purport to terminate the reservation status of the omitted parcels.[36] These arguments are legally and historically unsound.

The contention that the actions undertaken pursuant to the 1891 Act which caused the issuance of the 1893 trust patent by the President could not override the 1882 executive order is without foundation. Both forms of executive action, the 1882 executive order and the 1893 trust patent, were derived from specific Acts of Congress, the 1864 Act and 1891 Act, respectively.[37] The 1864 Four Reservations Act authorized the creation by the President of executive order reservations while the 1891 Mission Indian Act afforded comparable authority to the Secretary of the Interior to provide permanent settlements for the Mission Indians through the issuance

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[34] Pechanga Band v. Kacor Realty, Inc., 630 F.2d at 75.

[35] Petition at 8.

[36] *Id.*

[37] The 1886 executive order referred to by petitioner, Petition at 8, whereby President Cleveland removed certain land from the 1882 executive order reservation, was obviously issued pursuant to the 1864 Act. That removal occurred well in advance of passage of the 1891 Act and demonstrates the different approaches that were followed by the two statutes.

of trust patents.[38] As a result, the actions of the Secretary of the Interior resulting in a trust patent to petitioner which did not include the land at issue were most certainly of "equal stature and dignity" to the initial creation of petitioner's interest, if any.[39] This is particularly true since the 1891 Act was specifically designed to overcome the problems and uncertainties caused by the existing executive order reservations.

Petitioner's second assertion, that the Secretary did not intend to reduce the size of the reservations and that his failure to include the land in the final trust patent was in error or "mere inadvertance" and not imputable to the tribe is also without support. Under Section 3 of the 1891 Act, the Secretary of the Interior was charged by Congress to cause the final trust patents to be issued, which he did in this case in 1893.[40] Under that law, it was clearly the Secretary's role to ascertain whether there were any "valid objection[s]" to any proposed patent and to insure that "no patent shall embrace any tract or tracts to which existing valid rights have attached."[41] These legal obligations provided the foundation for the decision-making process, and caused the exclusion of the land from the reservation. There was no form of inadvertance or indirect approval as petitioner would suggest. By specifically determining not to include the land at issue in the Pechangas' trust patent and by affirmatively deciding not to further contest the settler's patents, the

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[38] *Compare* Four Reservations Act § 2, Ch. 48, 13 Stat. 39, 40 (1864) *with* Mission Indian Relief Act § 3, Ch. 65, 26 Stat. 712-13 (1891).

[39] As stated by the Assistant Attorney General, "[t]he whole [Mission Indian Relief] [A]ct shows that it was the intention of Congress to confide to a great extent in the discretion of the Secretary of the Interior." Letter of Assistant Attorney General Shields to the Secretary of the Interior (July 22, 1891).

[40] Mission Indian Relief Act § 3, 26 Stat. 712 (1891).

[41] *Id.*

Secretary of the Interior carried out the function delegated to him by Congress under the 1891 Act.[42]

While petitioner may presently quarrel with the decisions of these officials, it is clear that they comported with the statutory scheme established by Congress in 1891 to solve the very problem raised by this litigation. Indeed, even if these official decisions were made in error, the Court has held that decisions by authorized officials convey good title to those to whom the lands are given.[43]

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[42] Petitioner attempts to rest upon the fact that the Secretary of the Interior, upon the advice of the Commissioner of Indian Affairs, directed the General Land Office to issue a patent for such lands "as are found to be free from conflicts and to subsequently issue a similar patent for such of the remaining tracts as may hereafter become free of conflict." Petition at 3. At the same time, the Secretary sought to determine from the fraud litigation whether the existing conflict could be eliminated. The "conflict" was ultimately resolved in favor of defendants' predecessors in interest by the later decision of the Attorney General, with the concurrence of the Secretary of the Interior, to dismiss that litigation. Thus, if the possible inclusion of the land at issue in a trust patent was in any way left open in 1893 the issue was fully and finally resolved in 1901 by those officials authorized by the 1891 Mission Indian Relief Act and the general land laws to do so.

[43] United States v. Creek Nation, 295 U.S. 103, 110 (1935) ("Plainly the United States would have been entitled to a cancellation of the disposals had it instituted suits for that purpose. But, although having full knowledge of the facts, it made no effort in that direction. On the contrary, it permitted the disposals to stand —not improbably because of the unhappy situation in which the other course would leave the allottees and settlers. In this way the United States in effect confirmed the disposals . . . ."). *Accord*, Confederated Salish and Kootenai Tribes v. United States, 401 F.2d 785, 788 (Ct. Cl. 1968), *cert. denied*, 393 U.S. 1055 (1969); United States v. Ahtanum Irrigation Dist., 236 F.2d 321, 338 (9th Cir. 1956), *cert. denied*, 352 U.S. 988 (1957). This is a far different situation than *Cramer v. United States*, 261 U.S. 219, 234 (1923), Petition at 4-5, where the Court held that the government was without authority to deal with the Indians' land in the manner it had attempted to do so.

C. *The Court of Appeals and District Court Properly Applied the "Disestablishment" Cases to This Set of Facts.*

It has been well established by the Court that a congressional or executive intention to terminate previous reservation land may be ascertained from an express statement to that effect or implied from the surrounding circumstances and legislative history.[44] The application of this method of interpretation to the language, legislative history and surrounding circumstances of the 1891 Act fully supports the conclusion of both lower courts that any interest petitioner acquired by the 1882 executive order was terminated and disestablished by Congress and by the duly-authorized officials of the executive branch.[45]

Indeed, the application of the disestablishment line of cases to the 1891 Act is somewhat easier than those earlier decisions of the Court. This case did not involve the opening up of a portion of an existing treaty reservation to non-Indian settlement as did the majority of "disestablishment" cases. Also, the disestablishment herein involved an executive order reservation rather than a recognized title reservation established by treaty or otherwise in which the tribe in issue may have a permanent, compensible interest. Further, as stated above, the 1891 Act had the sole purpose of the prospective "establishment" of completely new reservations.

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[44] Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977); DeCoteau v. District County Court, 420 U.S. 425 (1975); Mattz v. Arnett, 412 U.S. 481 (1973).

[45] This conclusion is also consistent with the result reached in *United States v. Santa Fe Pac. R.R. Co.*, 314 U.S. 339 (1941), a decision relied upon by petitioner. Petition at 4-5. In that case the Court held that acceptance of a new reservation requested by a tribe could be viewed as "tantamount to an extinguishment" of pre-existing tribal interests. *Santa Fe Pac.*, 314 U.S. at 357-58. In *Santa Fe Pacific*, as in the instant case, the new reservations were created in an effort to accomodate the competing interests of Indians and settlers. *Id.* at 358.

Both the Ninth Circuit and the district court, after consideration of a detailed documentary record, held that the 1891 Act had extinguished any prior interests in the 1882 reservation. There is no compelling reason for the Court to reconsider the application of these facts to what are now well-established principles of law by granting a writ of certiorari on this issue.[46]

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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[46] *See* City of Polson v. Confederated Salish and Kootenai Tribe, 103 S. Ct. 314 (1982) (Rehnquist, J. dissenting to denial of cert.) ("the decision of the Court of Appeals with respect to the 'termination' issue was based on principles derived from cases such as [*Rosebud Sioux*, *DeCoteau*, and *Mattz*] and does not warrant review here.").

APPENDIX

RELEVANT PORTIONS OF MISSION INDIAN RELIEF ACT

An act for the relief of the Mission Indians in the State of California

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That immediately after the passage of this act the Secretary of the Interior shall appoint three disinterested persons as commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided.

SEC. 2. That it shall be the duty of said commissioners to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include, as far as practicable, the lands and villages which have been in the actual occupation and possession of said Indians, and which shall be sufficient in extent to meet their just requirements, which selection shall be valid when approved by the President and Secretary of the Interior. They shall also appraise the value of the improvements belonging to any person to whom valid existing rights have attached under the public-land laws of the United States, or to the assignee of such person, where such improvements are situated within the limits of any reservation selected and defined by said commissioners subject in each case to the approval of the Secretary of the Interior. In cases where the Indians are in occupation of lands within the limits of confirmed private grants, the commissioners shall determine and define the boundaries of such lands, and shall ascertain whether they are vacant public lands in the vicinity to which they may be removed. And the said commission is hereby authorized to employ a competent surveyor and the necessary assistants.

SEC. 3. That the commissioners, upon the completion of their duties, shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the commission and approved by him in favor of each band or village of Indians occupying any such reservation, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus patented, subject to the provisions of section four of this act, for the period of twenty-five years, in trust, for the sole use and benefit of the band or village to which it is issued, and that at the expiration of said period the United States will convey the same or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust, and free of all charge or incumbrance whatsoever: *Provided*, That no patent shall embrace any tract or tracts to which existing valid rights have attached in favor of any person under any of the United States laws providing for the disposition of the public domain, unless such person shall acquiesce in and accept the appraisal provided for in the preceding section in all respects and shall thereafter, upon demand and payment of said appraised value, execute a release of all title and claim thereto; and a separate patent, in similar form, may be issued for any such tract or tracts, at any time thereafter. Any such person shall be permitted to exercise the same right to take land under the public-land laws of the United States as though he had not made settlement on the lands embraced in said reservation; and a separate patent, in similar form, may be issued for any tract or tracts at any time after the appraised value of the improvements thereon shall have been paid: *And provided further*, That in case any land shall be selected under this act to which any railroad company is or shall hereafter be entitled to receive a patent, such railroad company shall, upon releasing all claim and title thereto, and on the approval of the President and Secretary of the Interior, be allowed to select an equal quantity of other land of like

value in lieu thereof, at such place as the Secretary of the Interior shall determine: *And provided further*, That said patents declaring such lands to be held in trust as aforesaid shall be retained and kept in the Interior Department, and certified copies of the same shall be forwarded to and kept at the agency by the agent having charge of the Indians for whom such lands are to be held in trust, and said copies shall be open to inspection at such agency.

[Sections 4 to 8 omitted].